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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,853	12/29/2003	Paul J. Datta	659-1713 (K-C Case No. 19	2759
757 7590 02/21/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/747,853

Applicant(s)

DATTA ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,8,9,16-23 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 1-5,9,16-21,23 and 27-31 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 13 November 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Schaar fails to disclose a second garment closing fastener member that is located on the second portion of the body panel, it is noted that the instant claims disclose only one first garment closing fastener member and only one second garment closing fastener member. Schaar discloses two fastener members, one located on either side of the rear portion of the article. Since each fastener member is connected to both the body side surfaces of the extension fold and the second portion of the body panel, one fastener member may be considered the first fastener member and the other may be considered the second fastener member, and the first and second fastener members fulfill the limitations of the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 18-19, 23, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaar (3,978,861).

Schaar discloses an absorbent article, as shown in figure 9, comprising a body chassis comprising a body panel C and an extension fold 48. The extension fold 48 is

folded over defining a folded edge 50 along the waist edge, as shown in figure 9. The extension fold 48 has an overlying relationship with a first portion of the body panel, and terminates in a free edge 48A that is not connected to the body panel, as shown in figure 9. The body panel C has a second portion that is not in an overlying relationship with the extension fold 48, as shown in figure 9. An absorbent insert 36 is connected to the body panel C. Fastener members 61 connect to the body side surface of the extension fold 48 and the second portion of the body panel, as shown in figure 10A. One fastener member 61 is defined as the first garment closing fastener member, since it is connected at least in part to the body side surface of the extension fold, and the other fastener member 61 is defined as the second garment closing fastener member, since it is connected at least in part to the body side surface of the second portion of the body panel.

With respect to claim 2, the extension fold 48 is foldable between a first configuration, as shown in figure 9, and a second configuration, as shown in figure 13A, the second configuration having a greater length than the first.

With respect to claim 3-5, the garment side surface of the extension fold 48 is secured to the first portion of the body panel, as shown in figure 9, by means of adhesive 56. Adhesive is able to be released, and therefore the extension fold is releasably secured to the first portion.

With respect to claim 6, the fastener member 61 is a continuous element that extends from the body side surface of the extension fold to the second portion of the body panel, as shown in figure 10A.

With respect to claim 18, the extension fold 48 is gathered by a first amount, which is greater than the gathering of the body panel, as shown in figure 9.

With respect to claim 19, the extension fold 48 is retractable a first distance, as shown in figure 13A, and a second distance, as shown in figure 12A, the first distance being greater than the second.

With respect to claim 23, the difference between the first and second distances is between 1-60% of the initial length of the extension fold 48 and first portion, as shown in figures 12A and 13A.

With respect to claim 28-29, an absorbent insert 36 is connected to the body panel C. Fastener members 61 connect to the body side surface of the extension fold 48 and the second portion of the body panel, as shown in figure 10A. One fastener member 61 is defined as the first garment closing fastener member, since it is connected at least in part to the body side surface of the extension fold, and the other fastener member 61 is defined as the second garment closing fastener member, since it is connected at least in part to the body side surface of the second portion of the body panel.

With respect to claim 30, the second fastener member 61 extends from the body side surface of the extension fold across the free edge onto the second portion of the body panel, as shown in figure 10A.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar (3,978,861) in view of Fell et al. (2002/0169432).

Schaar discloses all aspects of the claimed invention with the exception of the body panel comprising front and rear body panels being spaced apart by a gap, wherein the absorbent insert bridges the gap. Fell teaches the equivalence of an absorbent article having front and rear body panels and an absorbent insert wherein the front and rear body panels are either spaced apart, as shown in figure 15, or connected through the crotch region, as shown in figure 12. Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to make the article of Schaar with the front and rear body panels spaced apart, since Fell teaches the functional equivalence of the front and rear body panels being either spaced apart or connected.

Claims 20-21, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar (3,978,861).

With respect to claims 20 and 21, Schaar discloses all aspects of the claimed invention with the exception of the difference of the first and second distances being between 0.10 and 6.0 inches. Schaar remains silent to the length of the extension fold and to the overall length of the article. However, it would be obvious to one of ordinary skill in the art at the time of invention to make the difference between the first and second distances between 0.10 and 6.0 inches, since it has been held that where the

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general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 27, Schaar discloses all aspects of the claimed invention with the exception of the first portion of the body panel comprising an elastic element. The first portion of the body panel is located in the waist region of the article of Schaar. It is well-known in the art for the waist region of an absorbent article to comprise an elastic element to allow the waist region to fit snugly around the waist of the wearer. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the waist region of Schaar with an elastic element to allow for a snug fit around the waist of the wearer.

With respect to claim 31, Schaar discloses all aspects of the claimed invention with the exception of the first and second garment closing fasteners comprising a hook or loop fastening component. Schaar discloses an adhesive fastening component. Adhesive fasteners and hook and loop fasteners are functionally equivalent in the art. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the fasteners of Schaar with a hook or loop component.

#### ***Allowable Subject Matter***

Claim 22 is allowed.

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to disclose the claimed invention. Specifically, the closest prior art of record, U.S. Patent 3,978,861, fails to disclose any elastic elements in either the extension fold or the first portion of the article. U.S. Patent 6,083,212, made of record but not relied upon, teaches an article having an extension fold and a first portion, but the elastic members are located in the first portion of the article, and the extension fold is free of elastic, as shown in figures 2 and 3. Therefore, a greater number of elastic members in the extension fold than in the first portion, in combination with the remaining limitations of the claim, is not disclosed nor suggested in the prior art of record. Further, the prior art of record fails to disclose a fastener member that is located on the body side surface of the second portion of the body panel, but also extends under the extension fold to connect the garment side surface of the extension fold to the body side surface of the first portion of the body panel. U.S. Patent 3,978,861 only discloses fastener members that connect the extension fold to the first portion of the body panel but do not extend to the second portion of the body panel, or connect to the second portion of the body panel but extend above and not under the extension fold.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*CWA*

cla

February 15, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

